

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:16-cv-62-FDW**

DEVIN HYMAN,

Plaintiff,

vs.

FNU MILLER, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

ORDER

THIS MATTER is before the Court on its own motion following receipt of summonses from the U.S. Marshal showing that service was executed on Defendants Miller, Murry, and Carswell.

Pro se Plaintiff Devin Hyman, a North Carolina prisoner incarcerated at Lanesboro Correctional Institution, filed this action on April 15, 2016, pursuant to 42 U.S.C. § 1983, alleging excessive force against Defendants “FNU Miller,” “FNU Causby,” “FNU Murry,” and “FNU Carswell,” all alleged to be employed as correctional officers at Alexander Correctional Institution at all relevant times. The excessive force allegedly occurred on February 4, 2016. On September 23, 2016, the Court found that the action survived initial review, and the Court ordered the U.S. Marshal to serve these Defendants using the summons forms submitted by Plaintiff. (Doc. No. 20). The U.S. Marshal thereafter attempted to effectuate service on Defendants at Alexander Correctional Institution. On December 12, 2016, the summons forms were returned as executed by the U.S. Marshal. (Doc. Nos. 36, 37, 38, 39). However, it does not appear that the U.S. Marshal properly served Defendants Miller, Murry, and Carswell in accordance with Rule 4 of the Federal

Rules of Civil Procedure. That is, the summons forms for Defendants Miller, Murry, and Carswell all state that personal service was made on “S. Church, Officer.” It is not clear, however, that “S. Church, Officer” is an agent authorized by appointment of law to receive service of process. The Court will, therefore, order the U.S. Marshal to attempt to re-serve Defendants Miller, Murry, and Carswell in accordance with Rule 4 of the Federal Rules of Civil Procedure. If these Defendants are no longer employed at the prison, then the U.S. Marshal must use reasonable efforts to locate these Defendants and serve them properly in accordance with Rule 4.

IT IS THEREFORE ORDERED that:

- (1) The U.S. Marshal is ordered to attempt service on Defendants Miller, Murry, and Carswell in accordance with Rule 4 of the Federal Rules of Civil Procedure. If these Defendants are no longer employed at the prison, then the U.S. Marshal shall use reasonable efforts to locate these Defendants and serve them properly in accordance with Rule 4.
- (2) The Clerk is instructed to mail a copy of this Order to the U.S. Marshal and the North Carolina Attorney General.

Signed: January 4, 2017

A handwritten signature in black ink, appearing to read "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

